



U.S. Department of Justice

ORIGINAL

United States Attorney  
Western District of Pennsylvania

633 United States Post Office & Courthouse  
Pittsburgh, Pennsylvania 15219



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**FACSIMILE TRANSMISSION COVER PAGE**

TO: Benjamin M. Cohan

Senior Assistant Regional Counsel

Telephone No: 215-814-2618

Fax No: 215-814-2603

FROM: Margaret (Peg) Pohuly

U.S. Attorney's Office

Telephone No: 412-644-4997

Fax No: 412-644-5870

DATE: October 14, 2004

NUMBER OF PAGES (including cover): 14

CONTENTS: U.S. vs. William Fiore Escrow and Settlement Agreement

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### ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this 15th day of July, 2004 by and between THE UNITED STATES OF AMERICA, with an address at 633 United States Post Office & Courthouse, Pittsburgh, PA 15219, (hereinafter referred to as the "U.S."), THE ESTATE OF WILLIAM M. FIORE, DECEASED, of Pittsburgh Pennsylvania, (hereinafter referred to as the "Fiore Estate"), DAVID W. FIORE, SR. AND MARSHALL W. FIORE, with a joint address c/o John D. Eddy, Esq., Manor Building Penthouse, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219, (hereinafter referred to as the "Fiore Heirs"), and BOOSE, CASEY, CIKLIN, LUBITZ, MARTENS, McBANE & O'CONNELL, with an address at 515 North Flagler Drive, 18<sup>th</sup> Floor, West Palm Beach, Florida 33401, Attention: Robert L. Crane, Esq., (hereinafter referred to as "Escrow Agent").

### WITNESSETH:

WHEREAS, the decedent, William M. Fiore, was at the time of his death the record owner of certain real property located at 152 Alexander Palm Road West, Boca Raton, Palm Beach County, Florida 33602, which property is more particularly described in Exhibit "A" attached hereto and made a part hereof, (hereinafter, the "Property"); and

WHEREAS, the U.S. is a record holder of two judgment liens against the decedent, William M. Fiore, issued by the U.S. District Court for the Western District of Pennsylvania, one at Docket No. C.A. 88-2631, in the principal amount of \$505,250.00, and the other at Docket No. 95-1590, in the principal amount of \$144,349.94 (hereinafter collectively, the "Judgment Liens"); and

WHEREAS, the Judgment Liens were recorded in Palm Beach County, Florida pursuant to Memorandum Order recorded in Official Record Book 7488, Page 70 and Abstract of Judgment recorded in Official Record Book 11361, Page 422, and

WHEREAS, the Fiore Heirs filed a Petition for Homestead Exemption in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, seeking to exempt the Property from the claims of the creditors of the decedent, William M. Fiore; and

WHEREAS, certain legal issues have arisen regarding whether the Judgment Liens constitute liens which are enforceable against the Property; and

WHEREAS, the United States, the Fiore Estate and the Fiore Heirs have agreed to amicably settle said issues without resorting to formal litigation, by entering into that certain Settlement Agreement dated July 16, 2004, a copy of which is attached hereto as Exhibit "B", (the "Settlement Agreement"); and

BOOSE, CASEY CIKLIN, LUBITZ, MARTENS, McBANE & O'CONNELL  
515 NORTH FLAGLER DRIVE P.O. BOX 4626 WEST PALM BEACH, FLORIDA 33402-4626

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WHEREAS, a sale of the Property is pending pursuant to that certain Residential Sale and Purchase Contract dated September 7, 2002 by and between William M. Fiore ("Seller") and Robin B. Schwartz ("Buyer"), (the "Contract"), which Contract is scheduled to close pending approval by the Circuit Court in and for the 15<sup>th</sup> Judicial Circuit of Palm Beach County, Florida - Probate Division (the "Court"); and

WHEREAS, the Escrow Agent is acting in the capacity of both closing agent and title agent on behalf of Seller named in said Contract, and as such is charged with the obligation of collecting and disbursing all monies due and payable pursuant to said Contract; and

NOW, THEREFORE, in consideration of the mutual promises made and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree:

1. Recitals. The matters recited in the premises above are true and correct.
2. Pre-Closing Delivery of Judgment Lien Releases. Prior to the closing of the sale of the Property pursuant to the Contract, the U.S. shall deliver in escrow to the Escrow Agent recordable releases of the Property from the Judgment Liens (the "Releases"), in a form acceptable to both the Escrow Agent and its title underwriter. Escrow Agent shall hold said Releases in escrow until such time as it has collected from the proceeds of the closing the sum of \$800,000 (hereinafter defined herein and in the Settlement Agreement as the "Pay-off Amount") and deposited said sum into its interest bearing trust account, at which time Escrow Agent shall be entitled to record the Releases in the Public Records of Palm Beach County, Florida. In the event said closing fails to take place within thirty (30) days following Escrow Agent's receipt of the Releases in acceptable form, Escrow Agent shall promptly return said original Releases to the U.S.
3. Termination of Escrow. Escrow Agent shall hold the Pay-off Amount in trust, disbursing said funds in accordance with the terms and conditions of the Settlement Agreement. Upon Escrow Agent's disbursement of the entire Pay-off Amount in the manner set forth in the Settlement Agreement, Escrow Agent shall be relieved of all obligations hereunder.
4. Indemnification of Escrow Agent. The U.S., the Fiore Estate and the Fiore Heirs jointly and severally indemnify Escrow Agent and hold Escrow Agent harmless from and against any loss, liability, cost, claim, damage, demand or expense, including reasonable attorney's fees, arising from Escrow Agent's actions or omissions pursuant to this Agreement, provided that the same do not result from Escrow Agent's gross negligence or willful misconduct. Escrow Agent shall be entitled to rely on the truth of any statement made to Escrow Agent by the U.S., the Fiore Estate and/or the Fiore Heirs for purposes of performing its duties under this Agreement.
5. Invalidity. In the event of the invalidity of any provision hereof, same shall be deemed stricken from this Agreement which shall continue in full force and effect as if the offending provision were never a part hereof.

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns.

7. Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reimbursement of the costs and expenses thereof from the other party, including reasonable attorneys' fees and including such costs, expenses and fees incurred on appeals of such litigation. The parties acknowledge that the transaction giving rise to this Escrow Agreement occurred in Palm Beach County, Florida and acknowledge that it is subject to the jurisdiction of Florida courts and that venue in any action arising out of this Escrow Agreement shall be had in Palm Beach County, Florida.

8. Governing Law. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with Florida law.

9. Survivability. This Escrow Agreement shall survive the delivery of the mortgage for the Property of even date herewith from Borrower to Lender.

10. Waiver of Jury Trial. The parties hereby knowingly, voluntarily, and intentionally waive any right that may exist to have a trial by jury in respect of any litigation based upon or arising out of, under or in any way connected with this agreement.

11. Notices. Each notice, request, approval, demand, consent or other communication which may be or which is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given if the same is (i) delivered personally or by professional courier service at the address last designated hereunder for the intended recipient during normal business hours, (ii) sent by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient at the address of such recipient last designated hereunder, or (iii) telecopied to the telecopier number of the recipient last designated hereunder and receipt of the transmission is confirmed by the sender's telecopy machine. Any notice delivered personally or by courier shall be effective on the date so delivered; any notice served by mail or professional courier service in the manner herein provided shall be effective on the earlier of actual receipt thereof or the first date of refusal of delivery by the addressee or attempted delivery by the postal or courier service; and any notice that is telecopied shall be effective on the day of receipt. The address or telecopier number of any party to whom notices may be or are required to be given may be changed from time to time by notice given as herein provided. Until further notice is given as herein provided, the addresses of the parties shall be as set forth at the beginning of this documents.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute one and the same instrument and it shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

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13. Construction of Agreement The parties agree that this Agreement was prepared jointly by each of them and shall be construed on a parity as between the parties. There shall be no canon of construction for or against any party by reason of the physical preparation of this instrument.

14. Effect of Words Whenever the word "including" appears in this Agreement, it shall be deemed to mean "including, without limitation" if the context permits.

15. Headings and Exhibits Paragraph headings are inserted solely for ease of reference and shall not be construed to enlarge, modify or limit the provisions hereof. Reference to numbered or lettered paragraphs refer to paragraphs of this Agreement unless specified to the contrary. Reference to Exhibits are to the Exhibits attached hereto which are, by this reference, made a part hereof.

16. Entire Agreement This Agreement contains the entire agreement and understanding between the parties and all modifications must be in writing and signed. No representation, statement, recital, undertaking or promise not specifically set forth herein shall be binding on any party hereto

17. Interpleader In the event Escrow Agent should ever be in doubt as to the proper disbursement of the Pay-off Amount, Escrow Agent shall have the right to file an interpleader action in the Circuit Court of Palm Beach County, Florida in which event the other parties to this Agreement shall be jointly and severally liable for any and all attorneys' fees and costs incurred by Escrow Agent in connection with such interpleader action.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

BOOSE CASEY, CIKLIN LUBITZ  
MARTENS, MELANE & O'CONNELL

By: 

Robert L. Crane, Esq.

Dated: August 2, 2004

THE UNITED STATES OF AMERICA

By: 

Michael Colville, AUSA

Dated: July 15, 2004

ESTATE OF WILLIAM M. FIORE,  
DECEASED

By: 

David W. Fiore, Jr., Administrator

Dated: August 2, 2004

By: 

David W. Fiore, Sr.

Dated: 7/20/04

By: Marshall W. Fiore

Marshall W. Fiore

Dated: 07-20-04

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EXHIBIT A

All of Lot 3, Block 1, Royal Palm Yacht and Country Club Subdivision, according to the map or plat thereof as recorded in Plat Book 26, Pages 57 through 62, inclusive, Public Records of Palm Beach County, Florida, together with the following described parcel: Beginning at the Northwest corner of Lot 3; thence with an assumed bearing of South  $9^{\circ} 17' 28''$  West, along the West line of Lot 3, 145.00 feet to a point on the South line of Lot 3; thence with a curve to the right having a tangent bearing North  $80^{\circ} 42' 32''$  West, and a radius of 185.00 feet, a distance of 25.08 feet to a point; thence with a bearing of North  $9^{\circ} 17' 28''$  East, 87.28 feet to a point; thence with a bearing of North  $33^{\circ} 11' 48''$  East, 61.35 feet more or less to the Point of Beginning, All in Block 1, Royal Palm Yacht and Country Club Subdivision as recorded in Plat Book 26, Pages 57 through 62 inclusive of the Public Records of Palm Beach County, Florida.

AGREEMENT

THIS AGREEMENT, made this 19th day of July, 2004, by and between THE UNITED STATES OF AMERICA (hereinafter, the "United States"),

AND

THE ESTATE OF WILLIAM M. FIORE, DECEASED (hereinafter, the "Fiore Estate"),

AND

DAVID W. FIORE, SR. and MARSHALL W. FIORE (hereinafter, the "Fiore Heirs"),

WITNESSETH.

WHEREAS, the decedent, William M. Fiore, was the record owner of certain real property located at 152 Alexander Palm Road West, Boca Raton, Palm Beach County, Florida 33602 (hereinafter, the "Property"), and

WHEREAS, the United States is the record holder of two judgments against the decedent, William M. Fiore, issued by the U S District Court for the Western District of Pennsylvania, one at Docket No. C.A. 88-2631, in the principal amount of \$505,250.00, and the other at Docket No. 95-1590, in the principal amount of \$144,349.94 (hereinafter collectively, the "Judgments"); and

WHEREAS, the Judgments were recorded in Palm Beach County, Florida pursuant to Abstracts of Judgment filed on September 3, 1999; and

WHEREAS, the Fiore Heirs filed a Petition for Homestead Exemption in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, seeking to exempt the Property from the claims of the creditors of the decedent, William M. Fiore; and

WHEREAS, certain legal issues have arisen regarding whether the Judgments constitute liens



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which are enforceable against the Property; and

WHEREAS, the parties hereto have agreed to amicably settle said issues without resorting to formal litigation, and

WHEREAS, the law firm of Boose, Casey, Calkin, Lubitz, Martens, McBane & O'Connell of West Palm Beach, Florida, has agreed to act as escrow agent for purposes of facilitating this Agreement (said Law Firm being hereinafter referred to as "Escrow Agent");

NOW, THEREFORE, in consideration of their mutual covenants and promises as hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Fiore Estate and the Fiore Heirs agree to pay the United States Eight Hundred Thousand Dollars (\$800,000.00)(the "Settlement Amount") within one hundred and eighty (180) days from the date of this agreement.

2. The parties acknowledge that a sale of the Property is pending pursuant to a certain Residential Sale and Purchase Contract dated September 7, 2002, between William M. Fiore (Seller) and Robin B. Schwartz(Buyer)(the "Contract"); and that the Court has entered an Order directing that the Property be sold by the Fiore Estate and the Fiore Heirs to Robin B. Schwartz for Two Million Three Hundred Thousand Dollars (\$2,300,000.00), pursuant to the Contract.

The parties agree that the Fiore Estate and the Fiore Heirs will transfer Eight Hundred Thousand Dollars (\$800,000.00) from the proceeds of the aforesaid sale (hereinafter "Sale Proceeds") to the Escrow Agent, with instructions that said Sale Proceeds shall be deposited into an escrow account, as collateral for the commitment made by the Fiore Estate and the Fiore Heirs to the United States as contained in Paragraph 1, herein.

If, prior to One Hundred Eighty (180) days from the date of this Agreement, the United States receives a partial payment of the Settlement Amount from the Fiore Estate and/or the Fiore Heirs, the United States shall notify the Escrow Agent of said payment within three (3) business days of the receipt of said payment and the Escrow Agent shall disburse a like amount to the Fiore Heirs.

If the United States receives full payment of the Settlement Amount, on or before 180 days from the date of this agreement, the United States agrees to notify and to inform the Escrow Agent of the receipt of the payment in full, and shall instruct the Escrow Agent to disburse any and all funds that remain in the escrow account to the Fiore Estate if the Property has not been determined to be homestead property, and to the Fiore Heirs if the Property has been determined to be homestead property.

3. To facilitate the sale of the Property, the United States will provide the Closing Agent with the appropriate lien releases in a recordable form acceptable to the Escrow Agent, for purposes of releasing the Property from the lien of the Judgments. In the event that the Closing Agent fails to transfer the Sale Proceeds to the Escrow Agent, or the pending sale fails to close for any reason, then this Agreement shall become null and void and the United States' Judgments will remain in full force and effect.

4. The parties agree that the Fiore Estate and the Fiore Heirs shall be permitted to disburse One Million Dollars (\$1,000,000.00) from the proceeds from the sale of the Property to the United States Steel Corporation at the time of the closing of the Property subject to the consummation of a Settlement Agreement between the Fiore Estate, the Fiore Heirs and the United States Steel Corporation. It is further agreed by the parties that the Fiore Estate and the Fiore Heirs shall be permitted to pay any and all closing costs, including Boose-Casey's attorney fees and any other

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settlement charges which are associated with the sale of the Property, and any federal and state taxes owed on the Property.

5. The parties agree that on or after One Hundred Eighty (180) days from the date of this Agreement the United States will notify the Escrow Agent of the amount of payment that has been received from or on behalf of the Fiore Estate or the Fiore Heirs. If the amount paid to the United States is less than the Settlement Amount, within three (3) business days after the Escrow Agent's receipt of said notice, the Escrow Agent shall disburse to the United States the difference between the Settlement Amount, and the amount actually received by the United States, plus any interest earned thereon. The parties agree that the payment by the Escrow Agent is to be in accordance with the instructions contained in Paragraph 7, herein.

6. If full payment of the Settlement Amount is not timely received by the United States as provided herein, the Judgments will remain in full force and effect and there will be no compromise of the United States' claim. If full payment of the Settlement Amount to the United States is made in accordance with Paragraph 1, herein, then the United States shall satisfy the Judgments within thirty (30) days of receipt of the full Settlement Amount.

7. Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the Fiore Estate and the Fiore Heirs, and shall be accompanied by a statement identifying the name and address of the Fiore Estate, the MIDC Site, the EPA Region and Site/Spill ID # 032E, and CERCLA Civil Action No. 95-1590 (\$176,000), USAO 1999Z00212 and RCRA Civil Action NO. 88-2631 (\$624,000), USAO 1999Z00248. At the time of payment, the Escrow Agent shall also send notice that payment has been made to:

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Office of the Regional Comptroller (3PM30)  
U.S. EPA Region III  
Attention: Barbara Borden  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Such notice shall reference the EPA Region and Site/Spill ID # 032E and the civil action numbers for this action

8. The Escrow Agent's duty to disburse the Sale Proceeds in accordance with this Agreement is expressly conditioned upon, and subject to, the execution of a formal Escrow Agreement between the Escrow Agent and the parties hereto, and an Order from the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, approving any such disbursements.

9. This Agreement shall be governed by and construed in accordance with Florida law.

10. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and may not be modified or amended except in a writing executed by all the parties hereto.

11. This Agreement may be executed in multiple counterparts which, taken together, shall constitute one legally binding instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written, intending to be legally bound hereby.

WITNESS:

THE UNITED STATES OF AMERICA

By   
Michael Colville, AUSA

ESTATE OF WILLIAM M. FIORE,  
DECEASED

ORIGINAL

Robert Hamilton

Mr. Casey

Mr. Casey

By:

David W. Fiore, Jr. Administrator

David W. Fiore Sr.

David W. Fiore, Sr.

Marshall W. Fiore

Marshall W. Fiore

CONSENT

BOOSE CASEY CILKIN LUBITZ  
MARTENS McBANE & O'CONNELL

By

Ronald E. Crescenzo, Esquire



U.S. Department of Justice

ORIGINAL

United States Attorney  
Western District of Pennsylvania

U.S. Post Office & Courthouse  
700 Grant Street  
Suite 400  
Pittsburgh, Pennsylvania 15219

412 644-3300

July 27, 2004

Robert L. Crane, Esquire  
515 North Flagler Drive  
18<sup>th</sup> Floor  
West Palm Beach, FL 33401

RE: Estate of William Fiore - Sale of Florida Real Estate


Dear M. Crane:

In response to your e-mail dated July 22<sup>nd</sup>, on behalf of the United States, this will confirm that the language, "Fiore Estate if the Property has not been determined to be homestead property, and to the Fiore Heirs if the Property has been determined to be homestead property," is to be inserted in place of the words, "Fiore Heirs" at the end of the first full paragraph on page 3 of the Agreement of settlement between the United States of America and the Estate of William M. Fiore, Deceased, and David W. Fiore, Sr. and Marshall W. Fiore, dated July 19, 2004.

If you have any questions or concerns regarding the above, please feel free to call me at (412)894-7337.

Sincerely,

MARY BETH BUCHANAN  
United States Attorney

  
MICHAEL C. COLVILLE  
Assistant U.S. Attorney

cc: John D. Eddy, Esquire (fax)

**RECEIVED**

AUG 02 2004